IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3333 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATYA PAL GUSAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3333 of 1992

PARTY-IN-PERSON for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 01/07/2004

CAV JUDGEMENT

1. The petitioner has approached this Court under Article 226 of the Constitution of India for

challenging order dated 6th May, 1992 passed by the Deputy Secretary, Finance Department, Government of Gujarat, whereby the petitioner's pay-scale is refixed from Rs.3500-5000 to Rs.2200-4200.

2. Facts of the case, in short, can be stated as under :-

2.1. The petitioner was recruited through the Gujarat Public Service Commission directly as the Deputy Collector in the then State Civil Services, Class-I, which is now redesignated as Gujarat Administrative Service, Class-I. Upon clearing post training examination he was recruited in a substantive vacancy and was confirmed on the post of Deputy Collector in the year 1968. It appears that later on since he was not placed in the higher pay-scale nor given any higher post, he had approached this Court by filing Special Civil Application No. 3080 of 1981 with Special Civil Application No. 3985 of 1981 seeking relief from this Court that the Government be directed to promote him to higher post of higher scale of Rs.1400-1800. Both these petitions, as can be seen from Annexure-A, were substantially allowed and the Government was directed to place the petitioner in the said pay-scale since his juniors were placed in the said pay-scale. These orders were challenged before the Division Bench in Letters Patent Appeal No. 211 of 1982 by the State Government. The appeal was held to be devoid of any merit and it was dismissed. Upon revision of the pay-scale, the petitioner was placed in the substantive pay-scale of Rs.3500-5000 with effect from 1st September, 1986 by the order dated 30th July, 1987 of the District Magistrate and Controller of Civil Defence, Jamnagar.

2.2. According to the petitioner, by letter dated 26th July, 1991 received from the District Magistrate and Controller of Civil Defence, Jamnagar at the instance of the Government, he was intimated that his pay would be fixed from Rs.3500-5000 to lower pay-scale of Rs.2200-4200. This decision of the Government was challenged by the petitioner by filing Special Civil Application No. 5920 of 1991. The learned Single Judge of this Court vide order dated 18th February, 1992 issued directions to the Government that the petitioner's pay-scale which was already fixed by the Controller of Civil Defence, Jamnagar, should not be refixed without granting the petitioner an opportunity to make written as well as oral representations before the concerned authority of the Finance Department. It was further directed that upon hearing the petitioner, if the order

was to be adverse to the interest of the petitioner, it should not to be implemented for a period of one week. In response to the direction given by this Court, the Department of Finance, Government of Gujarat, by notice dated 9th March, 1992 called upon petitioner to submit his written representation and show cause why his pay-scale which was wrongly fixed in the grade of ex-cadre instead of selection grade, should not be reduced to the revised pay-scale of Rs.2200-4200. The petitioner was asked to furnish his representation within 15 days. In response to the said show cause notice, the petitioner submitted his detailed reply dated 23rd March, 1992, wherein he had set-out about 14 reasons for not taking any such action. The petitioner was thereafter granted opportunity of personal hearing by the Deputy Secretary (Pay), Finance Department on 20th April, 1992. During the personal hearing he appears to have reiterated all the averments that were made in the written reply dated 23rd March, 1992 and submitted that he should be paid the pay-scale of Rs.3500-5000. The Deputy Secretary, Finance Department, by order dated 6th May, 1992 giving detailed reasons, came to the conclusion that the pay-scale of Rs.3500-5000 which was being given to the petitioner was erroneous and upon abolition of the selection grade with effect from 1/1/1986, the petitioner was entitled to receive revised pay-scale of Rs.2200-4200. It is this order which is now under challenge in this petition.

2.3. It may be noted here that upon admission of the petition to final hearing, the question regarding confirmation of interim relief which was granted vide order dated 14th May, 1992 was considered by the learned Single Judge [Coram : B.C. Patel, J.] by order dated 24th July, 1992 and the learned Judge refused to confirm the ad-interim relief after considering merits of the case. Against the said order, the petitioner preferred Letters Patent Appeal No. 355 of 1992 before the Division Bench of this Court. By order dated 25th August, 1992 the Division Bench, without entering into the merits of the case but keeping in view the practicabilities and equity, allowed the appeal and set aside the order of the learned Single Judge and granted interim relief subject to the outcome of this petition.

3. Mr. Satya Pal Gusain, the petitioner, who has appeared party-in-person, has submitted that the impugned order is absolutely erroneous and it deserves to be quashed and set aside. He has submitted that fixation of his pay in the scale of Rs.3500-5000 vide order dated 30th July, 1988 by the District Magistrate and Controller

of Civil Defence, Jamnagar, was not by way of any error, but it was in accordance with the law and the relevant Government rules. He has submitted that the posts on which he worked since 1982 or around that time were all ex-cadre posts, which were in the scale of Rs.3500-5000 and, therefore, he ought not to have been put in the lower scale. According to him, apart from this, even if the posts were not considered to be ex-cadre, he was placed in the selection grade by virtue of the Court's order and, therefore, the pay was not attached to the post but it was his personal pay-scale which was required to be protected. The petitioner in support of his submissions, has placed reliance on several decisions which will be referred to in due course.

3.1. As against that Mr. P.D. Bhate, Ld. AGP for the respondent has supported the impugned order and has submitted that the case of the petitioner was examined by the Finance Department very closely and it was found that he was not entitled to receive pay-scale of Rs.3500-5000 and hence the impugned order was passed. He has further submitted that the case of the petitioner for appointment on ex-cadre post which carries higher responsibility and more work was considered, but he was not found suitable for the same. It was only in the year 1999 that he was for the first time placed as Deputy Registrar, High Court on ex-cadre post. He has, therefore, submitted that this petition has no merit and it is required to be dismissed.

4. Having gone through the record of this petition and having carefully considered the rival submissions, it appears that the main controversy involved in this petition is whether the petitioner was holding any ex-cadre post during the relevant period or he was merely given the selection grade and even if it was the latter, he was entitled to be in the pay-scale of Rs.3500-5000. The record shows that Gujarat Administrative Service, Class-I (for short 'G.A.S.') was constituted vide Government notification issued by the General Administration Department dated 30th October, 1974 bringing the said service into existence with effect from 7th November, 1974. With the introduction of G.A.S. two different cadres of Deputy Collectors and Deputy D.D.Os. were merged. With a view to grant promotions to higher managerial post in the State Government, public corporations, public boards, a committee for selection of G.A.S. officers was constituted vide resolution dated 21st April, 1981. Again by resolution dated 26th November, 1981 it was resolved to sanction pay-scale of Rs.1400-1800 as selection grade for G.A.S. Class-I. The

scheme of selection grade was made effective from 9th September, 1981 with the approval of the State Government. It also contained the conditions and requisite criteria for grant of selection grade. According to the said criteria, 15% of the total number of permanent posts including leave reserved and training reserved posts and temporary posts under the Government which may have been in existence for a period of more than one year and which were likely to be continued for one year more, were made available for the selection grade posts in G.A.S. The pay-scale for G.A.S. officers of Rs.1400-1800 came into existence with effect from 9th September, 1981. By notification dated 4th January, 1986 issued by the G.A.D. the G.A.S. (Regulation of Appointment to Selection Grade Posts and to Ex-cadre Posts and Regulation of Pay) Rules, 1985 was issued.

4.1. As it transpires from the affidavit-in-reply of the respondent, the case of the petitioner was considered for grant of ex-cadre post. The petitioner's grievance was that he was wrongly denied the same and, therefore, Special Civil Application No. 3081 of 1981 was preferred by him alongwith Special Civil Application No. 3959 of 1981. While disposing of the said petitions the Government was directed to reconsider the case of petitioner for grant of ex-cadre post without taking into consideration the adverse remarks made against him. It appears that even thereafter the petitioner was found unsuitable and the decision was taken on 20th July, 1982 by the Special Committee which had met for this purpose. This decision was challenged by the petitioner by filing Special Civil Application No. 3307 of 1983. It is the case of the respondent that during the course of hearing of the said petition, it was stated by the petitioner that if he was granted selection grade, none of his grievances would survive. According to the respondents, this statement is even reflected in the order of the Division Bench of this Court dated 21st September, 1983. Thus, according to the respondent, prior to 1999 he was never given the ex-cadre post. However, it was decided to give him selection grade on the basis of length of his service. From the record, it appears that at that time both the posts i.e. the selection grade post as well as ex-cadre post carried the same pay-scale, namely Rs.1400-1800. According to petitioner, 1982-83 onwards he had been holding ex-cadre posts.

4.2. During the course of hearing of this petition, the petitioner was directed to furnish the details regarding the posts held by him 1982 onwards to

substantiate his claim that they were all ex-cadre posts. In response to the same, he has furnished a list giving details of 7 postings on different posts which according to him were from 1983 onwards till his retirement from the service. Details are contained in Annexure-G to the affidavit-in-reply filed thereto by the Under Secretary, General Administration Department dated 4th May, 2004. This affidavit has been filed also during the course of the hearing in view of the fact that the respondent controverted the claim of the petitioner regarding the posts contained in list furnished by him as ex-cadre posts. Since there was nothing on record to substantiate the submission of Mr. Bhate, Ld. AGP, with a view to give the Government one chance to complete the record since the list was produced at the instance of the Court by the petitioner after the hearing of the petition had commenced, to file an affidavit and put the contentions of the Government on record by way of affidavit. This was also done with a view to enable this Court to decide effectively the controversy involved in this petition.

4.3. According to the respondent, first four posts, namely that of (1) the Director, District Rural Development Agency, Baroda, (2) Deputy Controller, Civil Defence Organization, Jamnagar, (3) Commissioner, Kandla Project, Ahmedabad and (4) Gujarat Maritime Board, Ahmedabad/Gandhinagar, were not ex-cadre posts, but they were selection grade posts. To this affidavit, the petitioner was given opportunity to file his reply and he has done so by filing affidavit-in-rejoinder dated 30th April, 2004. However, except making several observations which are not in good taste and raising certain technical objections, nothing more has been stated. In other words, this statement of fact of the respondent contained in its affidavit is not controverted. This Court, therefore, is inclined to accept the version of the Government that till the year 1999 the petitioner never held any ex-cadre post. Thus, at the time when the impugned order was passed or prior thereto, the petitioner had not held any ex-cadre post.

4.4. The question that is now required to be considered is that whether in this background, the petitioner is entitled to have pay-scale of Rs.1400-1800 corresponding to the revised pay-scale of Rs.3500-5000. It may be noted here that the scheme of selection grade was abolished by the Government with effect from 1st January, 1986. That the petitioner was placed in the selection grade since he was not holding any ex-cadre post and he was placed in the pay-scale of Rs.700-1500. Thereafter, he was granted pay-scale of Rs.1400-1800 as

selection grade but it was not by virtue of his holding the ex-cadre post. It is true that both the scales were identical. However, with further revision of the pay, the ex-cadre post was put in the scale of Rs.3500-5000; whereas the selection grade was in the scale of Rs.2200-4200. Upon the abolition of the scheme of selection grade, it was found that the petitioner was wrongly placed in the scale of Rs.3500-5000. According to the respondent, this mistake was committed on account of the fact that the pre-revised scale was identical i.e. Rs.1400-1800 of both the grades and while furnishing the details the petitioner had not clarified whether he was in the selection grade or ex-cadre grade. Considering the factual aspects stated above, it is clear that the petitioner was not in the ex-cadre post, but he was holding the selection grade.

4.5. So far his submission that by virtue of the Court's order he was given higher grade and, therefore, it was his personal pay and not attached to the post is concerned, it is difficult to accept it. It appears from the record that even after the Court's direction to reconsider his case for grant of ex-cadre post, his case was reconsidered and he was found unsuitable. Subsequently in the proceedings in another petition before the Division Bench of this Court, statement appears to have been made by the petitioner that if he was granted selection grade, he would be satisfied and none of his grievances would survive. The petitioner's case was, therefore, considered for selection grade and by virtue of the length of service which he had put in, it was granted to him. Thus, it was not his personal pay but he was given the pay-scale which was attached to the said post i.e. Rs.1400-1800 having corresponding revised pay-scale of Rs.2200-4200 and not of Rs.3500-5000. Thus, the petitioner is not entitled to receive that pay-scale i.e. Rs.3500-5000.

5. It is the say of the petitioner that when the High Court had directed to place him in the scale of Rs.1400-1800 and by virtue of the said orders of the High Court he was given the said scale. The respondents had no authority to refix his pay-scale and revise it to Rs.2200-4200 from Rs.3500-5000. This submission of the petitioner is not well founded because the High Court has never said in any of its decisions relating to the grievance of the petitioner that he should be placed in the pay-scale of ex-cadre post. From whatever record as has been produced by the petitioner including the operative portions of the judgments of this Court in Special Civil Application No. 3080 of 1981 and Letters

Patent Appeal No. 211 of 1982, it appears that since the officers junior to the petitioner were appointed to man the post under State Government in the pay-scale of Rs.1400-1800, the Court had asked the Government to grant him that scale. On the contrary, it appears that in one of the petitions pending before this Court, the petitioner had indirectly given up his claim for ex-cadre post by making aforesaid statement in Special Civil Application No. 3307 of 1983. The record shows that the said grade was granted to him. It cannot be in any manner said that the High Court had issued any direction requiring the respondents to place him in the ex-cadre post. At some point of time this Court did give certain directions to the respondents to consider his case for appointment on the ex-cadre post, but even after reconsideration he was found not suitable. The submission of the petitioner, therefore, cannot be accepted.

5.1. The petitioner has also submitted that when he had already been granted the scale of Rs.3500-5000 by virtue of the order dated 30th July, 1988, it cannot be revised and refixed in the lower scale as the bar of res-judicata and estoppel would apply. I fail to understand that how the principle of res-judicata would come into operation. In the instant case pay-scale granted to the petitioner by virtue of order dated 30th July, 1988 related to the ex-cadre post. It was through mistake that the said scale was granted to him. By refixing the same, the respondent was merely amending the mistake it had committed. There was no judicial proceedings between the parties in which, on merits, the issue regarding petitioner holding ex-cadre post and was entitled to receive grade of Rs.3500-5000 had been decided by a competent Court. The respondent has adequately explained that how this mistake was committed by the concerned authority. If there is a mistake and shortly it has come to the notice of the respondent, it is entitled to amend the same and put the things in proper order. Thus neither bar of res-judicata nor of estoppel would be attracted in this case.

5.2. The petitioner has placed reliance on several decisions. The first is rendered by the Apex Court in the case of C.C. Padmanabhan v/s. The Director of Public Instruction reported in 1980(2) S.L.R. p. 599. In this decision the Apex Court has explained the words "higher grade". The Apex Court has said that when the higher grade is given for working against a post which calls for higher scale of pay keeping in view the additional or higher responsibilities attached to it, it

would amount to posting the Government servant on such post and it would carry special pay. This decision will not apply to the facts of the present case. The petitioner was given higher grade in view of the fact that his juniors were already given such grade. This was designated as selection grade and which carried the pay-scale of Rs.1400-1800 (pre-revised scale) corresponding to Rs.2200-4200 revised scale. He was never placed in any ex-cadre grade before 1999. Thus, at the time when the impugned order came to be passed, he had never discharged duty on any ex-cadre post. The scale attached to the said grade was required to be paid to him and precisely, by impugned order it was sought to be done. This decision, therefore, will not render any help to the petitioner.

5.2.1. He has also placed reliance on the decision of the Apex Court rendered in the case of State of Rajasthan v/s. Fateh Chand Soni reported in 1996(1) SLR p. 1. In this decision it has been held that when an officer in the senior scale is appointed to the selection scale, it constitutes promotion. It has also explained the word "promotion" and has laid down that it would not only cover advancement to higher position or rank but also imply advancement to a higher grade. In para. 8 it has been laid down as under :-

> "8. The High Court, in our opinion, was not right in holding that promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word "promote" means "to advance to a higher position, grade or honour". So also "promotion" means "advancement or preferment in honour, dignity, rank or grade". [See : Webster's Comprehensive Dictionary, International Edition, p.1009]. "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In Service law also the expression "promotion" has been understood in the wider sense and it has been held that "promotion can be either to a higher pay scale or to a higher post". [See : Union of India & Anr. v. S.S. Ranade 1995(4) SCC 462 at p. 468 : 1995(2) SLR 718 (S.C.)]."

I am afraid this decision will also not help the petitioner, because even if placement of the petitioner in the higher grade i.e. selection grade is considered to be a promotion, he is not being denied the pay-scale

attached to such post. It is only that the claim of the petitioner to have the scale meant for ex-cadre grade is being refused. If that be so, this decision will not render any help to him.

5.2.2. Similarly the decision rendered by the Karnataka High Court in the case of H. Veerabhadrappa v. Deputy Commissioner, Raichur reported in 1980 All India Services Law Journal p. 602 will not render any help to the petitioner, since, on facts, it differs and it is mainly delivered keeping in view the adverse remarks made against the concerned officer.

6. Thus, considering the overall position of facts as well as law, the claim of the petitioner is found to be untenable and his grievance regarding refixation of his pay to Rs.3500-5000 from Rs.2200-4200 cannot be accepted. The impugned order, therefore, appears to be just and proper and it does not require any interference by this Court.

6.1. Before parting with the judgment, it is necessary to deal with one important aspect and that is, in the event the respondent intends to recover the excess amount paid to the petitioner, whether it would be entitled to receive interest thereon. As stated above, the appeal preferred by the petitioner against order of the Ld. Single Judge dated 24th July, 1992 vacating the ad-interim relief was allowed on 25th August, 1992. While allowing the appeal, it was also observed by the Division Bench that considering the nature of the controversy involved in the petition, there should not be any prolongation of the disposal of the Special Civil Application. In view thereof, it was directed that the petition be listed before the learned Single Judge on 7th September, 1992 for fixation of date for final disposal. From the order sheet, it appears that the learned Single Judge [Coram : N.B. Patel, J. as he then was] vide order dated 15th September, 1992, passed order to the effect that the petition be fixed for final hearing in the 3rd week of December, 1992. It further appears that thereafter no effective hearing has taken place till it was heard by me. In this background of the facts, it is necessary to observe that when the interim relief was operating against the respondent, it was incumbent upon the respondent to get the matter heard especially when this Court had granted such opportunity. No attempt appears to have been made by the respondent to get the matter finally disposed of at the earliest. On the contrary, it appears that subsequently the petitioner had been making efforts to get the matter heard and it is my

experience that before me almost on all occasions, the petitioner had remained present, but the respondent for one reason or other had sought adjournments. In the circumstances, the delay that has been caused in final disposal of this petition is solely on account of the respondent. The respondent, therefore, will not be entitled to receive any interest on the excess amount.

7. Thus, the result is that this petition has no merit and it fails and it is hereby ordered to be dismissed. Rule discharged. Interim relief granted earlier stands vacated.

[AKSHAY H. MEHTA, J.]

The petitioner, who is appearing as party-in-person, makes a request to extend the interim relief for a period of eight weeks from today. Considering the facts and circumstances of the case, the request appears to be genuine and it is granted.

[AKSHAY H. MEHTA, J.]

* Pansala.